

Appl. No. 10/029,563
Filing Date: December 20, 2001

REMARKS

By this paper, Applicant has amended Claims 1 and 7, and has cancelled Claim 4. Thus, Claims 1-3 and 5-9 remain pending and are presented for further examination.

I. Telephonic Conference with Examiner on January 4, 2005

Applicant appreciates the Examiner gesture for taking time to discuss the claims of the present application. As agreed in our telephonic discussion, Applicant has amended each of independent Claims 1 and 7 to incorporate the limitations of Claim 4. Applicant understands that the Examiner has determined that each of the amended Claims 1 and 7 recites patentable subject matter. In addition, Applicant understands that the Examiner has determined that Claim 9 also recites patent subject matter. Thus, each of independent Claims 1, 7, and 9 are allowable. As each of Claims 2-3, and 5-8 depend from one of Claims 1 and 7, Applicant submits that Claims 2-3, and 5-8 also are allowable.

II. Discussion of Rejection Under Nonstatutory Double Patenting

On page 2 of the Final Office Action of July 12, 2004, the Examiner provisionally rejected Claims 1-9 under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-29 of co-pending Application No. 10/029,605. The Examiner noted that this is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented. The Examiner indicated that a timely filed terminal disclaimer in compliance with 37 C.F.R. § 1.321(c) may be used to overcome an actual or provisional rejection based on the nonstatutory double patenting ground.

As agreed in the telephonic discussion with the Examiner, Applicant has filed an amendment with respect to the '605 application that places the claims of that application in condition for allowance. As also agreed in the telephonic discussion with the Examiner, Applicant has filed herewith a terminal disclaimer with respect to the '605 application. Thus, Applicant submits that Claims 1-3 and 5-9 are allowable with respect to the claims of the '605 application.

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III. Conclusion

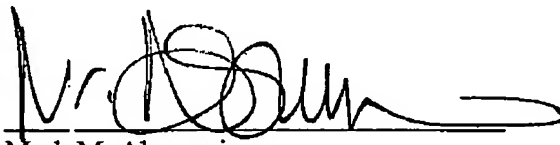
Applicant has endeavored to address all of the Examiner's concerns as expressed in the Office Action. Accordingly, amendments to the claims, the reasons therefor, and arguments in support of patentability of the pending claim set are presented above. Any claim amendments which are not specifically discussed in the above remarks are made in order to improve the clarity of claim language, to correct grammatical mistakes or ambiguities, and to otherwise improve the clarity of the claims to particularly and distinctly point out the invention to those of skill in the art. Finally, Applicant submits that the claim limitations above represent only illustrative distinctions. Hence, there may be other patentable features that distinguish the claimed invention from the prior art.

In view of the foregoing, Applicant respectfully requests reconsideration and withdrawal of the outstanding rejections and, particularly, that all claims be allowed. If the Examiner finds any remaining impediment to the prompt allowance of these claims that could be clarified with a telephone conference, the Examiner is respectfully invited to call the undersigned.

Please charge any additional fees, including any fees for additional extension of time, or credit overpayment to Deposit Account No. 11-1410.

Respectfully submitted,
KNOBBE, MARTENS, OLSON & BEAR, LLP

Dated: January 11, 2005

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